

CV 05
0005
8-16-1189
U.S. DISTRICT COURT, E.D.N.Y.
APR 26 2005
BROOKLYN OFFICE
GERSHON, J

UNITED STATES DISTRICT COURT
EASTERN DISTRICT

ABRAHAM AUSTIN

Plaintiff

-against-

INDEX

VERIFIED COMPLAINT

JAN FOODS

Defendant

Abraham Austin, by his Attorney, Vernita Charles Esq., an attorney duly admitted to practice law in the State of New York, and admitted to practice law in the United States District Court, Eastern District, hereby complains of the following:

- MATSUMOTO, M., J.
- 1) That the Plaintiff was employed by Jan Foods, for approximately eight years and worked in the Defendant's supermarkets.
 - 2) The Plaintiff was employed as a laborer who insured that enough inventory was displayed on the store's shelves, that the store maintained its cleanliness, and performed other miscellaneous tasks assigned by the management of the supermarket.
 - 3) That the Plaintiff's usual workday easily entailed eleven to twelve hours daily, working six days per week, which on average, totaled 66 to 80 hours per week of labor.
 - 4) That the Plaintiff only received a payment of \$400 (four hundred dollars) regardless of the hours worked, or the job performed.
 - 5) That after working at the supermarket for many years, Plaintiff learned that he should have been paid one and one - half times his hourly pay rate once his work hours exceeded 40 hours in a span of seven days. Plaintiff then called the Department of Labor to rectify the Defendant's non-compliance with Federal and State law.
 - 6) Subsequent to the investigation done by the Department of Labor, the Defendant began to change the format in which he made payroll.

7) According to weekly paystubs given to the Plaintiff, the hourly rates to which the Plaintiff was paid began to sporadically change, and the Plaintiff was not sure the hourly rate to which he was being paid.

8) The rate and level of payment of the Plaintiff's wages varied so much, that the Plaintiff could not calculate his gross wages, based on the hours that he worked.

9) Plaintiff was still denied the one hour and a half compensation rate for the overtime employment that he performed, which usually was 10 to 12 hours on a weekly basis.

10) Upon information and belief, the Defendant, after being warned about his payroll practices from the Department of Labor, attempted to financially compensate for the cost of employment by varying the hourly rate to which he paid the Plaintiff, thereby avoiding his obligation to pay the Plaintiff the correct amount of overtime compensation.

11) For the entire time the Plaintiff had been employed by the Defendant, the Defendant has refused to pay the proper wage rate to the Plaintiff for the overtime employment he has performed, even after being investigated by the Department of Labor.

AS A FIRST CAUSE OF ACTION

The Defendant has violated 29 U.S.C § 207 et seq., also known as the Fair Labor Standards Act.

AS AND FOR A SECOND CAUSE OF ACTION

The Defendant has violated 29 U.S.C. § 216, by willfully violating the Fair Labor Standards Act.

AS AND FOR A THIRD CAUSE OF ACTION

The Defendant has breached an implied contract.

WHEREFORE,

The Plaintiff demands the following:

- a) overtime compensation to which he is entitled for past wages.
- b) liquidated damages equal to the amount of compensation to

which he is entitled.

c) Attorneys fees and the costs of the action

Dated:



Vernita Charles, Esq.
Attorney for the Plaintiff
44 Court Street, Suite 1210
Brooklyn NY, 11201
Tel No. (718) 802- 9749
Fax No. (718) 875- 5398

VERIFICATION

STATE OF NEW YORK)
)
COUNTY OF KINGS)

ss.:

Abraham Austin, being duly sworn, says that he is the Plaintiff in the above-named proceeding and that the foregoing complaint is true to his own knowledge, except as to matters therein stated to be alleged on information and belief and as to those matters he believes it to be true.


Plaintiff

Sworn to before me this

28th day of March 2005
Madhuri Keluskar
Notary Public

MADHURI ATUL KELUSKAR
Notary Public, State of N.Y
No. -41-4961620
Qualified in Nassau County
Cert. Filed in Kings County
Commission Expires Feb. 5

2006

DEMAND FOR JURY

Plaintiff hereby demands a trial by jury on all issues of the within matter.

By 
Vernita Charles, Esq.